



BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 5041-00 6 December 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments

(2) Case Summary

(3) Subject's naval record

- 1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to establish his eligibility for reserve retirement.
- 2. The Board, consisting of Mr. McPartlin, Mr. Pfeiffer and Mr. Leeman, reviewed Petitioner's allegations of error and injustice on 28 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
- 3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
- a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
- c. Petitioner served on active duty in the Marine Corps from 6 April 1973 to 6 June 1979 and from 21 January 1982 to 20 January 1994, a total of about 18 years. It appears that when separated in 1994, he was paid separation pay, which required a three year enlistment in the Marine Corps. The Career Retirement Credit Report (CRCR) shows that he enlisted in the Marine Corps Reserve on 21 January 1994. During the next three years Petitioner did not participate in the Marine Corps Reserve and earned no qualifying years for reserve retirement. During 1997 he affiliated with a reserve unit and as of 20 January 2000 has earned three consecutive qualifying years. During this period, on 1 December 1998, he was promoted to GYSGT.
 - d. The CRCR shows that as of 20 January 2000 he has been

credited with 21 years, 2 months and 1 day of qualifying service for reserve retirement. However, he is not eligible for reserve retirement because the last six years of qualifying service are not in the reserve component. He has earned sufficient retirement points to make the next year a qualifying year, except for the fact that his current enlistment expires on 6 December 2000 and he needs to serve until 20 January 2001 to have a full qualifying year. Petitioner is being denied further service because he has reached the length of service limitations of 22 years of qualifying service for a GYSGT.

e. The Board is aware that the Uniform Retirement Date Act, 5 U.S.C. 8301 requires that the effective day of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable The Board notes that Petitioner was apparently paid separation pay and would not normally be authorized any further service. However, he was allowed to affiliate with a reserve unit and earn additional qualifying years. There is no documentation in the record showing that Petitioner was aware of the requirement that the last six years of qualifying service be in the reserve component, or that he could be denied further service prior to earning the last six qualifying years. Therefore, the Board believes that Petitioner earned retirement points in good faith with the expectation that he could qualify The Board is also aware that if the for reserve retirement. record is corrected to show reserve retirement, any separation pay would be recouped when he starts drawing his retired pay at age 60. Given the circumstances, the Board concludes that Petitioner's record should be corrected to make him eligible for reserve retirement. Such an correction can be accomplished by transferring sufficient retirement points from the excess over 50 in the anniversary years after those ending on 20 January 1996 and 1997 to make those two years qualifying for reserve In addition, his current enlistment should be extended for the minimum period of two months. Since this correction will take him past the end of his anniversary year on 20 January 2001, he will have earned another complete qualifying year. With these corrections, the record will show that he has over 22 years of qualifying service with the last six years in the reserve component. Finally, the record should be corrected to show that he transferred to the Retired Reserve on 1 February 2001.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future

reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by transferring sufficient retirement points from the anniversary years beginning on 21 January 1997 to the anniversary years ending on 20 January 1996 and 1997 to make those years qualifying for reserve retirement.
- b. That Petitioner's naval record be further corrected by extending his last enlistment for a period of two months. The record should then show that he transferred to the Retired Reserve in the grade of GYSGT on 1 February 2000 vice being discharged on 6 December 2000 or any other date.
- c. That this Report of Proceedings be filed in Petitioner's naval record.
- 4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN Recorder ALAN E. GOLDSMITH Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

W. DEAN PRETFERENCE Executive Director